

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN L. MURPHY,

Petitioner,

vs.

JAMES D. HARTLEY, Warden,

Respondent.

Civil No. 10-1319 JAH (BLM)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION
PURSUANT TO 28 U.S.C.
§ 2244(b)(3)(A) GATEKEEPER
PROVISION**

Petitioner, Kevin L. Murphy, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis. The Court does not rule on Petitioner's request to proceed in forma pauperis because this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

PETITION BARRED BY GATEKEEPER PROVISION

The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his April 19, 1996 conviction in San Diego Superior Court case No. SDC 113064. On August 24, 1999, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in case number. 99cv1787. In that petition, Petitioner challenged his conviction in San Diego Superior Court case No. SDC 113064 as well. On May 17, 2002, this Court denied the petition on the merits. (*See* Order filed May 17, 2002 in case No. 99cv1787 H (CGA) [Doc. No. 73].) Petitioner appealed that determination. On August 9, 2004, the Ninth Circuit Court

1 of Appeals affirmed this Court's denial of the Petition. (*See* Order in *Murphy v. Carey*, No. 02-
2 56004 (9th Cir. Aug. 9, 2004) [Doc. No. 84].)

3 Petitioner is now seeking to challenge the same conviction he challenged in his prior
4 federal habeas petition. Unless a petitioner shows he or she has obtained an Order from the
5 appropriate court of appeals authorizing the district court to consider a successive petition, the
6 petition may not be filed in the district court. *See* 28 U.S.C. § 2244(b)(3)(A). Here, there is no
7 indication the Ninth Circuit Court of Appeals has granted Petitioner leave to file a successive
8 petition.

9 **CONCLUSION**

10 Because there is no indication Petitioner has obtained permission from the Ninth Circuit
11 Court of Appeals to file a successive petition, this Court cannot consider his Petition.
12 Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition
13 in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. For
14 Petitioner's convenience, the Clerk of Court shall attach a blank Ninth Circuit Application for
15 Leave to File Second or Successive Petition.

16 **IT IS SO ORDERED.**

17 DATED: June 28, 2010

18 
19 _____
20 John A. Houston
21 United States District Judge
22
23
24
25
26
27
28